

MAR 1 2006

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF APACHE

IN RE: THE GENERAL ADJUDICATION
OF ALL RIGHTS TO USE WATER IN
THE LITTLE COLORADO RIVER
SYSTEM AND SOURCE

No. 6417

**STIPULATION AND REQUEST FOR
ENTRY OF JUDGMENT AND
DECREE**

THIS STIPULATION, dated this 1st day of March, 2006, is entered into among the Zuni Indian Tribe, the United States of America in its capacity as trustee for the Zuni Indian Tribe, the Arizona Game and Fish Commission, the Arizona State Land Department, the Arizona State Parks Board, St. Johns Irrigation & Ditch Company, the Lyman Water Company, Round Valley Water Users' Association, Salt River Project Agricultural Improvement and Power District, Tucson Electric Power Company, the City of St. Johns, the Town of Eagar, and the Town of Springerville.

WHEREAS,

1. Certain water rights claimed by the Zuni Indian Tribe ("Tribe") and the United States for the benefit of the Tribe ("United States") are to be permanently settled by agreement among the parties to this Stipulation ("Parties"). The terms of the Zuni Indian Tribe Water Rights Settlement Agreement of 2002, as amended, ("Settlement Agreement") were approved, ratified and confirmed by the United States Congress in the Zuni Indian Tribe Water Rights Settlement Act, Public Law 108-34, 117 Stat. 788 (2003) ("Settlement Act"). A copy of the Settlement Agreement is attached as Exhibit 1 to this Stipulation and is incorporated herein by reference. The terms that are used in this Stipulation and defined in Article 2 of the Settlement Agreement have the meaning set forth in the Settlement Agreement. A proposed Judgment and Decree, which is substantially in the form of the

1 proposed Judgment and Decree that is attached to the Settlement Agreement as Exhibit 11.9,
2 is attached as Exhibit B to the Application for an Order for Special Proceedings to Approve
3 an Indian Water Rights Settlement and Stipulation.

4 2. The purpose of the Settlement Agreement is to resolve water rights litigation
5 and to provide resources to restore wetlands and the Sacred Lake on the Zuni Heaven
6 Reservation. The Reservation was authorized by Congress to protect and to recognize long-
7 standing religious and sustenance activities by the Tribe on certain lands along the Little
8 Colorado River and the Zuni River in the vicinity of St. Johns, Arizona. Public Law 98-498,
9 98 Stat. 1533 (1984), as amended by Public Law 101-486, 104 Stat. 1174 (1990).

10 3. The primary benefits of the Settlement Agreement for the Tribe and the United
11 States are a resolution of litigation; a recognition of the Tribe's water rights; the restoration of
12 a wetland area and lake that have special significance to the Tribe; the fulfillment of the
13 United States' trust responsibility to the Tribe; and a waiver of the State parties' claims
14 against the Tribe and the United States as well as a waiver of the Tribe's claims against the
15 United States.

16 4. The primary benefits of the Settlement Agreement for the State of Arizona and
17 other non-federal parties are a resolution of litigation; the Tribe's and the United States'
18 agreement not to object to existing surface water and underground water uses; the facilitation
19 of State programs to rehabilitate streams, enhance riparian habitats, protect fish and wildlife
20 resources, and provide recreational opportunities; and a waiver of the Tribe's and the United
21 States' claims against the non-federal parties.

22 5. As described in Paragraph 1.7 of the Settlement Agreement, the Tribe will use at
23 least 5,500 acre feet of surface water per annum for wetland restoration on the Reservation in
24 accordance with the Settlement Agreement. The Tribe will use existing surface water rights
25 appurtenant to its fee lands, and, within the scope of the Settlement Agreement, it has the
26 right to acquire up to 3,600 acre feet of water per annum of existing court decreed upstream
27 surface water. The Tribe may sever and transfer its water rights for use on the Reservation in

1 accordance with the Settlement Agreement and State law. The Tribe's existing surface water
2 rights are described in abstracts, which are attached to the Settlement Agreement as Exhibits
3 4.1.A (1) et seq.. The Tribe's abstracted rights will be adjudicated along with other
4 claimants' rights in the normal course of the adjudication. The Parties have agreed not to
5 object to the attributes of the Tribe's water rights described in these abstracts as set forth in
6 Paragraph 4.2.A of the Settlement Agreement.

7 6. For wetland restoration purposes on the Reservation, the Tribe will receive an
8 appropriation of 5,500 acre feet per annum from the unappropriated flows of the Little
9 Colorado River with a priority date of August 28, 1984 as described in Paragraph 4.6.B of the
10 Settlement Agreement and in the abstract attached to the Settlement Agreement as Exhibit
11 4.6.B.

12 7. As provided in Paragraphs 4.6 (D) and (E) of the Settlement Agreement, the
13 Tribe or the United States may purchase surface water rights from willing sellers in the
14 Norviel Decree area. The Tribe, the United States and the Lyman Water Company have
15 executed a Water Right, Entitlement and Perpetual Delivery Agreement ("Entitlement and
16 Delivery Agreement"). Pursuant to the Entitlement and Delivery Agreement, the Tribe and
17 the United States for the benefit of the Tribe shall hold all right, title and interest to a
18 permanent water right and entitlement to receive, on an annual basis, twelve percent (12%) of
19 LWC Delivered Water as defined in Paragraph 5 of the Entitlement and Delivery Agreement,
20 at the priority date of Lyman Reservoir under the Norviel Decree. Twelve percent (12%) of
21 LWC Delivered Water has historically provided 972 AFA of water. Nothing in the
22 Entitlement and Delivery Agreement restricts, enlarges or otherwise determines the subject
23 matter jurisdiction of any state or federal court. A copy of the Entitlement and Delivery
24 Agreement is attached to this Stipulation as Exhibit 2 and is incorporated herein by reference.

25 8. The Lyman Water Company and St. Johns Irrigation Company have prepared
26 abstracts of their surface water rights, which are attached to the Settlement Agreement as
27 Exhibits 4.1.C (1) et seq. The companies' abstracted rights will be adjudicated along with

1 other parties' rights in the normal course of the adjudication. The Parties have agreed not to
2 object to the attributes of the companies' water rights described in these abstracts as set forth
3 in Paragraph 4.2.C of the Settlement Agreement.

4 9. The Arizona Game and Fish Commission will also prepare abstracts of its
5 surface water rights in the manner described in Paragraph 3.1.F of the Settlement Agreement.
6 The Commission's abstracted rights will be adjudicated along with other parties' rights in the
7 normal course of the adjudication. The Parties will agree not to object to the attributes of the
8 Commission's water rights described in these abstracts as set forth in Paragraph 4.2.B of the
9 Settlement Agreement. The Parties will amend the Settlement Agreement as required by
10 Paragraph 3.1.F of the Settlement Agreement.

11 10. No new surface water appropriations will be allowed in the Norviel Decree
12 Area as described in Paragraph 4.3 of the Settlement Agreement.

13 11. No new reservoirs or dams will be constructed on the Little Colorado River
14 between Lyman Dam and the western boundary of the Reservation without the written
15 consent of the Tribe except under certain conditions described in Paragraph 4.4 of the
16 Settlement Agreement.

17 12. The Parties will not object to the Tribe's withdrawal or use of 1,500 acre feet
18 per annum of underground water from wells on the Zuni Pumping Lands if the water is used
19 on those lands, in accordance with Paragraph 5.3 of the Settlement Agreement. The Zuni
20 Pumping Lands, which are adjacent to the Reservation, are described in Exhibit 2.48 to the
21 Settlement Agreement.

22 13. The Tribe will not object to water uses from all existing wells and from new
23 exempt wells as set forth in Paragraphs 5.1 and 5.5 of the Settlement Agreement.

24 14. For new wells located outside the Zuni Protection Area, the Tribe and the
25 United States will not object to the withdrawal of water from new non-exempt wells unless
26 the withdrawal of water interferes with the Tribe's surface water rights as described in
27

1 Paragraph 5.6 of the Settlement Agreement. The Zuni Protection Area, which is adjacent to
2 the Reservation, is set forth in Exhibit 2.48 to the Settlement Agreement.

3 15. For new wells located inside the Zuni Protection Area, the Tribe and the United
4 States will not object to the withdrawal of water unless the Static Water Level Decline is more
5 than 50 feet as described in Paragraph 5.7.D of the Settlement Agreement.

6 16. Any owner of land located within the Zuni Protection Area may sign a Pumping
7 Protection Agreement and agree to limit the capacity of new wells on his or her land to a total
8 of 500 gallons per minute for each section of land, or a prorated amount if the lands are less
9 than one section. If a landowner enters into a Pumping Protection Agreement, the Tribe and
10 the United States will not object to wells or withdrawals of underground water from wells on
11 his or her land that are consistent with the terms of the Pumping Protection Agreement. The
12 Pumping Protection Agreement Form is attached to the Settlement Agreement as Exhibit
13 5.7.B.

14 17. The Tribe and the United States have also entered into agreements with Salt
15 River Project, Tucson Electric Power Company and the Arizona State Land Department that
16 recognize certain intended uses of underground water. These agreements are acknowledged
17 in Section 5.8 of the Settlement Agreement.

18 18. The United States will take certain lands into trust for the benefit of the Tribe to
19 aid its wetland restoration project in accordance with Article 6 of the Settlement Agreement.
20 With respect to these new trust lands, the Tribe will cooperate with the State of Arizona and
21 local governments through an Intergovernmental Agreement addressing certain
22 environmental, water, tax and land use issues.

23 19. The Tribe will receive \$21,863,000, which will be used for water rights
24 acquisition, and wetland restoration and maintenance in accordance with Article 7 of the
25 Settlement Agreement. As provided by the Settlement Act, the United States will contribute
26 \$19,250,000 for water rights acquisition, facility construction and other related costs. The
27 State of Arizona will contribute \$1,613,000 for wetland restoration. The Salt River Project

1 will contribute \$1,000,000 for restoration of the Sacred Lake and cultivation of riparian
2 vegetation on the Reservation. In addition, the Arizona Game and Fish Commission will
3 spend up to \$6,000,000 to acquire irrigated land and water rights, which it may sever and
4 transfer to the Tribe. Pursuant to these expenditures by the Arizona Game and Fish
5 Commission, up to 1,000 acre-feet of water per annum will be delivered to the Tribe for the
6 benefit of wildlife.

7 20. As set forth in Article 8 of the Settlement Agreement, water rights made
8 available to the Tribe under the Settlement Agreement and used on the Zuni Heaven
9 Reservation will be held in trust by the United States in perpetuity, and will not be subject to
10 forfeiture and abandonment. State law does not apply to water uses on the Zuni Heaven
11 Reservation. Subject to paragraph 7.7 of the Settlement Agreement, the Tribe will use water
12 made available to it under the Settlement Agreement on the Zuni Heaven Reservation for any
13 use it deems advisable. The Tribe or the United States will not, however, sell, lease, transfer,
14 or transport water made available to it for use on the Zuni Heaven Reservation to any other
15 place; provided, however, that water may be severed and transferred from the Zuni Heaven
16 Reservation to other Zuni Lands, if the severance and transfer is accomplished in accordance
17 with state law. Once transferred to any lands held in fee, that water will be subject to state
18 law.

19 21. Neither the Tribe nor the United States will enforce the priority of non-Norviel
20 Decree water rights that it holds against Norviel Decree water rights pursuant to Paragraph
21 10.3 of the Settlement Agreement.

22 22. The State parties will execute a waiver of past, present, and future claims for
23 injuries to water rights or water quality against the Tribe and the United States, as described
24 in the waiver, which is attached to the Settlement Agreement as Exhibit 11.1(revised).

25 23. The Tribe and the United States for the benefit of the Tribe will execute waivers
26 of past, present and future claims to water rights, injuries to water rights and injuries to water
27

1 quality, as described in the waivers, which are attached to the Settlement Agreement as
2 Exhibits 11.2.1, 11.2.2 and 11.2.3.

3 24. The Tribe will execute a waiver of its right to request that the United States
4 bring past, present, and future claims of injury to water quality, and claims of interference
5 with the trust responsibility of the United States, as described in the waivers, which are
6 attached to the Settlement Agreement as Exhibits 11.2.2 and 11.3 (revised).

7 25. The water supplies that are the subject of the Settlement Agreement between
8 the Parties are subject to the jurisdiction of this Court.

9 26. The Parties to this Stipulation have submitted the Settlement Agreement to this
10 Court for its approval pursuant to Section 9 (a) (12) of the Settlement Act and the Arizona
11 Supreme Court's Administrative Order dated September 27, 2000, in which the Court adopted
12 special procedures for the approval of Indian water rights settlements.

13 NOW THEREFORE,

14 1. The Parties to this Stipulation request that this Court approve this Stipulation
15 and the Settlement Agreement, which is attached hereto as Exhibit 1.

16 2. The Parties to this Stipulation also request that after completion of the
17 conditions set forth in Section 9 of the Settlement Act and Paragraph 3.1 of the Settlement
18 Agreement, this Court enter a Judgment and Decree, consistent with the proposed Judgment
19 and Decree attached as Exhibit B to the Application for an Order for Special Proceedings to
20 Approve an Indian Water Rights Settlement and Stipulation, which is substantially in the form
21 of the proposed Judgment and Decree attached to the Settlement Agreement as Exhibit 11.9,
22 adjudicating the water rights of the Tribe and of the United States for the benefit of the Tribe
23 to the water supplies within its jurisdiction as provided by the terms of the Settlement
24 Agreement. The Judgment and Decree shall be binding upon all parties to the Little Colorado
25 River Adjudication except to the extent that the express terms of the Stipulation and
26 Settlement Agreement provide that non-signing parties will not be bound by the Stipulation
27 and Settlement Agreement.

1 RESPECTFULLY SUBMITTED this 1st day of March, 2006.

2 UNITED STATES DEPARTMENT OF JUSTICE

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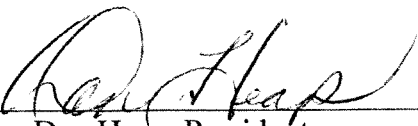
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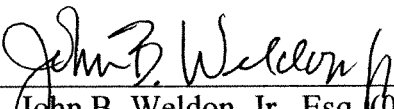
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1 ST. JOHNS IRRIGATION & DITCH CO.

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3 By: 
4 Dan Heap, President

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6 SALMON, LEWIS & WELDON, P.L.C.

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23 Attorney for Tucson Electric Power Company

24 ~~ORIGINAL AND ONE COPY of the foregoing,~~
25 mailed via overnight delivery on this ____ day of
26 _____, 2006 for filing to:

27 Clerk of the Apache County Superior Court
Attn: Water Case 6417
70 West Third South
St. Johns, AZ 85936

~~AND COPIES of the foregoing sent via first-class mail~~

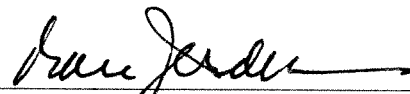
1 ST. JOHNS IRRIGATION & DITCH CO.

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4 By: _____
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24 ORIGINAL AND ONE COPY of the foregoing
25 mailed via overnight delivery on this 1st day of
26 March, 2006 for filing to:

27 Clerk of the Apache County Superior Court
Attn: Water Case 6417
70 West Third South
St. Johns, AZ 85936
AND COPIES of the foregoing sent via first-class mail

1 on March, 2006 to:

2 The Hon. Eddward P. Ballinger, Jr.
3 Judge of the Superior Court
4 18380 N: 40th St., Ste. 120
5 Phoenix, AZ 85032

6 AND COPIES of the foregoing sent via first-class mail
7 this 15th day of March, 2006 to all parties
8 appearing on the Court-approved mailing list for this
9 Adjudication dated June 15, 2005.

10 Cheryl Kilcline
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